



Via E-mail: MarathonMine.Review@ceaa-acee.gc.ca

May 9, 2011

Marathon Platinum Group Metals and Copper Mine Project
Canadian Environmental Assessment Agency
160 Elgin Street, Ottawa, ON, K1A 0H3

Attention: Colette Spagnuolo, Panel Manager

Dear Ms. Spagnuolo;

Re: Submissions on the Draft Harmonization Agreement and Terms of Reference for the Joint Review Panel – Marathon PGM-CU, CEAR # 10-05-54755

On behalf of Ontario Nature and Environment North, we submit the following comments on the Draft Harmonization Agreement and Terms of Reference for the Joint Review Panel.

Environment North is a non-profit, charitable organization, established in Thunder Bay in 1972. We strive to improve and protect the ecological sustainability and socio-economic well-being of Northwestern Ontario through leadership, research, partnerships, education, community advocacy, information and community capacity-building. We recognize that Environment North's specific actions and activities revolve around respect and shared responsibility for air, water and land, the essentials of all life. Environment North's 9 member Board consists of residents of the Thunder Bay region, and our membership is mainly comprised of individuals from across northern Ontario.

Ontario Nature is a non-profit charitable organization representing more than 30,000 members and supporters and 140 member groups across Ontario. Ontario Nature protects wild species and wild spaces through conservation, education and public engagement.

General Comments:

We are generally content with the provisions outlined in the Draft Harmonization Agreement and the Draft Terms of Reference for the Joint Review Panel. We are, however, concerned that where the federal and provincial processes overlap or are in conflict that decisions to use one or the other will be made without public input into the decision-making process. We therefore recommend that the Preamble include a paragraph that clarifies how decisions will be made where the two processes overlap or are in conflict. Furthermore, we recommend that this preamble clarify that the public will have an opportunity to provide input through the public comment process where these decisions are made.

1. Harmonization Agreement

Section 1: Definitions

As the Panel is instructed to “conduct an assessment of the environmental effects of the Project in a manner consistent with the requirements of the *Canadian Environmental Assessment Act* and the Ontario *Environmental Assessment Act*” (Terms of Reference, s. 2.1), we recommend, for clarity, that the definition of “environmental effect” should be included among the definitions provided in Section 1 of the Harmonization Agreement. **We recommend incorporating the *Canadian Environmental Assessment Act* definition** as follows:

“environmental effect” means, in respect of a project,

(a) any change that the project may cause in the environment, including any change it may cause to a listed wildlife species, its critical habitat or the residences of individuals of that species, as those terms are defined in subsection 2(1) of the *Species at Risk Act*,

(b) any effect of any change referred to in paragraph (a) on

(i) health and socio-economic conditions,

(ii) physical and cultural heritage,

(iii) the current use of lands and resources for traditional purposes by aboriginal persons, or

(iv) any structure, site or thing that is of historical, archaeological, paleontological or architectural significance, or

(c) any change to the project that may be caused by the environment, whether any such change or effect occurs within or outside Canada.

Section 3: Constitution of the Joint Review Panel

The constitution of the Joint Review Panel, as proposed, is determined by the Agency and the Provincial Ministry of Environment (s. 3.2). In our view, this fails to recognize the Treaty relationship between the federal and provincial governments and First Nations. Further, it excludes the participation of the affected Aboriginal communities in determining the constitution of the Joint Review Panel. As such, **we recommend that one candidate on the panel be chosen by representatives of the affected Aboriginal governments/organizations. In the alternative, we recommend that affected Aboriginal groups be, at minimum, included in the decision-making process for the selection of the panel members.**

We further recommend that s.3.4 be amended to include that at least one member of the review panel will have knowledge relevant to Aboriginal issues and concerns as they relate to resource extraction and its impacts on Aboriginal and Treaty rights and traditional territories.

Section 4: Conduct of Assessment by the Joint Review Panel

Section 4.8, as written, does not provide adequate explanation of the notion of “meaningful public participation.” We recommend that this be clarified as follows:

“The Joint Review Panel hearings shall be public and the review will provide opportunities for meaningful public participation including, but not limited to, the following:”

- (a) opportunity for public participants in the panel hearings to question witnesses,
- (b) opportunity for each public participant to question witnesses if they so choose
- (c) opportunity for each public participant to pursue a line of questioning for a witness through to a conclusion or to the satisfaction of the panel.

Section 10: Participant Funding

Public participation is integral to the environmental assessment process and participant funding ensures that this can occur. However, due to administrative procedures, public participation timelines can be narrowed (e.g. if contribution agreement distribution and endorsement lag behind the announcement of participant funding). We therefore recommend that the timeline on any phase of the EA process that is subject to participant funding begins to run only *after* contribution agreements have been properly endorsed.

2. Terms of Reference for the Joint Review Panel

Part III – Environmental Assessment Process

EIS Sufficiency

Section 3.2

We recommend that the comment period on the EIS of “not less than 60 days” be changed to read “not less than 90 days” in order to provide for meaningful public participation, as mandated in the Harmonization Agreement at Section 4. 8.

Announcement of Public Hearing

Section 3.8

This section does not provide information regarding how the Joint Review Panel will determine the procedures for the conduct of the public hearings. We recommend that the Joint Review Panel be instructed to seek input from the public and Aboriginal participants in this regard.

This section goes on further to state that “The public hearings will provide the Proponent, federal and provincial government departments, Aboriginal groups and members of the public with an opportunity to present their views on the Project.” This does not provide certainty that there will be opportunity for participants to ask questions of the witnesses on evidence presented to the Joint Review Panel.

We therefore recommend that the Section 3.8 be revised as follows:

“The Joint Review Panel, after taking into consideration comments from the public, will issue procedures for the conduct of the public hearing(s). The public hearing(s) will provide the Proponent, federal and provincial government departments, Aboriginal groups and members of the public with an opportunity to present their views and question witnesses on the Project. For further clarification, participants who wish to question witnesses will be provided adequate time and number of questions to do so.”

Specialist Advisors to the Panel
Section 3.11

Ontario Nature and Environment North would like to ensure that all advice given to the Joint Review Panel, and that may substantively affect the Panel's report, be delivered in a manner open and transparent to the public

We therefore recommend that section 3.11 be revised as follows:

"Should the Joint Review Panel retain the services of non-governmental experts, the names of the experts retained and any documents obtained or created by the experts and that are submitted to the Joint Review Panel will be placed on the public registry, subject to the provisions in section 35 of the *Canadian Environmental Assessment Act*. For greater certainty, this shall exclude any information subject to solicitor-client privilege where the expert is a lawyer. Should the advice of expert advisors be given by way of a meeting or in a similarly undocumented fashion, a record of the advice given shall be prepared and placed on the public registry. The Joint Review Panel may require an expert to appear before the Joint Review Panel at the public hearing sessions and present information in regard to the documents they have created or obtained and that were submitted to the Joint Review Panel and made public in accordance with article 3.13.

Thank you for the opportunity to provide these comments. We look forward to continued participation in this process.

Sincerely,

<original signed by>

<original signed by>

Peter Rosenbluth
Ontario Nature

Charlene Rogers, BA, MES
Environment North